

1 **Chapter 13.26A**
2 **WATER QUALITY**

3 **13.26A.005 Purpose**

4 A. The purpose of this chapter is to protect the county's surface and
5 groundwater quality by providing minimum requirements for reducing and controlling the
6 discharge of contaminants and stormwater flows. The board of county commissioners
7 recognizes that water quality degradation can result either directly from one discharge
8 or through the collective impact of many small discharges.

9 B. In furtherance of this purpose, the board of county commissioners
10 prohibits the discharge of contaminants to surface water, stormwater and groundwater
11 as set forth in Section 13.26A.025 and requires certain sites and activities to utilize best
12 management practices as set forth in Section 13.26A.035 and stormwater facility
13 maintenance practices set forth in Section 13.26A.040

14 C. The board of county commissioners also recognize that the
15 implementation of successful pollution control practices is most likely through a pollution
16 prevention (water resources) education effort for business owners and the general
17 public. In implementing this ordinance, the county will primarily rely on education and
18 technical assistance to show individuals how to implement pollution control practices.
19 Enforcement actions will normally be implemented when education and technical
20 assistance measures are unsuccessful at protecting the public interest or when persons
21 willfully contaminate the water resources of Clark County. Further it is not the intent of
22 this chapter to have the county pursue enforcement actions against persons whose
23 actions or activities result in the discharge of de minimis amounts of contaminants into
24 the water resources of Clark County.

25 D. The board of county commissioners finds this chapter is necessary to
26 protect the health, safety and welfare of the residents of Clark County and the integrity
27 of the county's resources for the benefit of all by: minimizing or eliminating water quality
28 degradation; preserving and enhancing the suitability of waters for recreation, fishing,
29 wildlife habitat, aquatic life and other beneficial uses; and preserving and enhancing the
30 aesthetic quality and biotic integrity of the water. The board of county commissioners
31 recognizes that implementation of this chapter is required under the federal Clean
32 Water Act, 33 U.S.C. 1251 et seq. In meeting the intent of the Clean Water Act the
33 board of county commissioners also recognizes the importance of maintaining
34 economic viability while providing necessary environmental protection and believes this
35 chapter helps achieve both goals.

36 **13.26A.010 Education and technical assistance**

37 A. The Clark County public works department shall develop a storm water
38 best management practices manual and present this manual to the Clark County
39 planning commission for review and the Clark County board of county commissioners
40 for approval.

1 B. The Clark County public works department will provide, upon reasonable
2 request, available technical assistance materials and information, and information on
3 outside financial assistance options to persons required to comply with this chapter.

4 **13.26A.015 Definitions**

5 The following definitions shall apply in the interpretation and enforcement of this
6 chapter:

7 A. "AKART" means an acronym for "all known, available, and reasonable
8 methods of prevention, control, and treatment." AKART shall represent the most current
9 methodology that can reasonably be required for preventing, controlling or abating the
10 pollutants associated with a discharge. The concept of AKART applies to both point and
11 nonpoint sources of pollution.

12 B. "Best management practices" or "BMPs" mean the best available and
13 reasonable physical, structural, managerial or behavioral activities, that when used
14 singly or in combination, eliminate or reduce the contamination of surface and/or
15 groundwaters.

16 C. "Chapter" means this chapter and any administrative rules and regulations
17 adopted to implement this chapter.

18 D. "Clean Water Act" means 33 U.S.C. 1251 et seq., as amended.

19 E. "Contaminants" include, but are not limited, to the following:

- 20 1. Trash or debris;
- 21 2. Construction materials;
- 22 3. Petroleum products including but not limited to oil, gasoline, grease, fuel
23 oil or heating oil;
- 24 4. Antifreeze and other automotive products;
- 25 5. Metals in either particulate or dissolved form;
- 26 6. Flammable or explosive materials;
- 27 7. Radioactive material;
- 28 8. Batteries;
- 29 9. Acids, alkalis, or bases;
- 30 10. Paints, stains, resins, lacquers or varnishes;
- 31 11. Degreasers and/or solvents;
- 32 12. Drain cleaners;
- 33 13. Pesticides, herbicides or fertilizers;
- 34 14. Steam cleaning wastes;
- 35 15. Soaps, detergents, or ammonia;
- 36 16. Swimming pool backwash;

17. Chlorine, bromine, and other disinfectants;
 18. Heated water;
 19. Domestic animal wastes;
 20. Sewage;
 21. Recreational vehicle waste;
 22. Animal carcasses, excluding salmonids;
 23. Food wastes;
 24. Bark and other fibrous materials;
 25. Collected lawn clippings, leaves or branches;
 26. Silt, sediment, or gravel;
 27. Dyes (except as stated in subsection (C)(1) of Section 13.26A.025);
 28. Chemicals, not normally found in uncontaminated water; and
 29. Any hazardous material or waste, not listed above.
- F. "County" means the municipality of Clark County.
- G. "Director" means the director of the Clark County department of public works, other department directors specified in enforcement procedures established pursuant to this chapter, or any duly authorized representatives of such directors.
- H. "Discharge" means to throw, drain, release, dump, spill, empty, emit or pour forth any matter or to cause or allow matter to flow, run or seep from land or be thrown, drained, released, dumped, spilled, emptied, emitted or poured into water.
- I. "Drainage facility" means the system that collects, conveys, and stores surface and stormwater runoff. Drainage facilities shall include but not be limited to all surface and stormwater conveyance and containment facilities including streams, pipelines, channels, ditches, swamps, lakes, wetlands, closed depressions, infiltration facilities, retention/detention facilities, erosion/sedimentation control facilities and other drainage structures and appurtenances, both natural and artificial.
- J. "Farm management plan" means a comprehensive site-specific plan developed by the farm owner in cooperation with the Clark County Conservation District taking into consideration the land owners objectives while protecting water quality and related natural resources.
- K. "Forest practices" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting or processing timber, as defined in Chapter 222-16 Washington Administrative Code.
- L. "Groundwater" means all waters that exist beneath the land surface or beneath the bed of any stream, lake or reservoir, or other body of surface water, whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves.
- M. "National Pollutant Discharge Elimination System" or "NPDES" means the

1 national program for controlling pollutants from point source discharges directly into
2 waters of the U.S. under the Clean Water Act.

3 N. "National Pollutant Discharge Elimination System permit" means an
4 authorization, license, or equivalent control document issued by the Environmental
5 Protection Agency or the Washington State Department of Ecology to implement the
6 requirements of the NPDES program.

7 O. "Person" means an individual, their agents or assigns; municipality;
8 political subdivision; government agency; partnership; corporation; business; or any
9 other entity.

10 P. "Source control BMP" means a BMP intended to prevent contaminants
11 from entering surface and stormwater and/or groundwater including the modification of
12 processes to eliminate the production or use of contaminants. Source control BMPs can
13 be either structural or nonstructural. Structural source control BMPs involve the
14 construction of a physical structure on site, or other type of physical modification to a
15 site; for example, building a covered storage area. A nonstructural source control BMP
16 involves the modification or addition of managerial or behavioral practices; for example,
17 using less toxic alternatives to current products or sweeping parking lots.

18 Q. "State Waste Discharge Permit" means an authorization, license, or
19 equivalent control document issued by the Washington State Department of Ecology in
20 accordance with Washington Administrative Code.

21 R. "Stormwater BMP Manual" or "manual" means the manual (and supporting
22 documents as appropriate) describing best management practices, design,
23 maintenance, procedures and guidance which has been approved by the Clark County
24 board of county commissioners or the Stormwater Management Manual for the Puget
25 Sound Basin (Washington Department of Ecology (February 1992))

26 S. "Stormwater Facility Maintenance Manual" means a manual approved by
27 the Clark County Board of County Commissioners for stormwater facility maintenance.

28 T. "Surface and stormwater" means water originating from rainfall and other
29 precipitation that is found in drainage facilities, rivers, streams, springs, seeps, ponds,
30 lakes and wetlands as well as shallow groundwater.

31 U. "Treatment BMP" means a BMP intended to remove contaminants once
32 they are already contained in stormwater. Examples of treatment BMPs include:
33 oil/water separators, biofiltration swales, and wet-settling basins.

34 **13.26A.025 Discharges into Clark County waters**

35 A. Prohibited discharges.

36 1. It is unlawful for any person to discharge any contaminants, as defined in
37 Section 13.26A.015, into surface and stormwater, or groundwater.

38 2. Illicit connections. Any connection that could convey anything not
39 composed entirely of surface and stormwater directly to surface and stormwater or
40 groundwater is considered an illicit connection and is prohibited with the following

1 exceptions: connections conveying allowable discharges, connections conveying
2 discharges pursuant to an NPDES permit or a State Waste Discharge Permit, and
3 connections conveying effluent from onsite sewage disposal systems to subsurface
4 soils.

5 B. Allowable discharges. The following types of discharges shall not be
6 considered prohibited discharges for the purpose of this chapter unless the director of
7 public works determines that the type of discharge, whether singly or in combination
8 with others, is causing significant contamination of surface and stormwater or
9 groundwater:

- 10 1. Potable water;
- 11 2. Potable water line flushing;
- 12 3. Uncontaminated water from crawl space pumps or footing drains;
- 13 4. Lawn watering;
- 14 5. Residential car and boat washing;
- 15 6. Dechlorinated swimming pool water;
- 16 7. Materials placed as part of an approved habitat restoration or bank
17 stabilization project;
- 18 8. Natural uncontaminated surface water or groundwater;
- 19 9. Flows from riparian habitats and wetlands;
- 20 10. The following discharges from boats: engine exhaust, cooling waters,
21 effluent from sinks, showers and laundry facilities and treated sewage from Type I and
22 Type II marine sanitation devices; and
- 23 11. Common practices for water well disinfection.

24 C. Exceptions.

25 1. Dye testing is allowable but requires verbal notification to the Clark County
26 public works director at least one day prior to the date of test. The Clark County public
27 works department, Southwest Washington Health District, or a sewer service purveyor
28 is exempt from this requirement.

29 2. If a person has properly designed, constructed, implemented and is
30 properly maintaining BMPs, and is carrying out AKART as required by this chapter or
31 through another federal, state or local regulatory or resource management program,
32 and contaminants continue to enter surface and stormwater or groundwater, then that
33 person shall not be in violation of subsection A of this section.

34 3. If a person can demonstrate that there is no additional contaminants being
35 discharged from the site above the background conditions of the water entering the site,
36 then that person shall not be in violation of subsection A of this section.

37 4. Emergency response activities or other actions that must be undertaken
38 immediately or within a time too short to allow full compliance with this chapter, to avoid
39 an imminent threat to public health or safety, shall be exempt from this section. The

1 director of public works may specify actions that qualify for this exception in county
2 procedures. The person responsible for emergency response activities should take
3 steps to ensure that the discharges resulting from such activities are minimized to the
4 greatest extent possible. In addition, this person shall evaluate BMPs and the site plan,
5 where applicable, to restrict recurrence.

6 **13.26A.035 Best management practices requirements**

7 A. Best Management Practices.

8 1. The Clark County public works department shall develop a storm water
9 best management practices manual and present this manual to the Clark County
10 planning commission for review and the Clark County board of county commissioners
11 for approval. The manual shall present BMPs and procedures for existing facilities and
12 activities, and for new development activities not covered by the Clark County
13 stormwater control ordinance (Chapter 13.29). At a minimum, the manual shall describe
14 the types of regulated activities; the types of contaminants generated by each activity,
15 and the contaminant's effect on water quality; the required source control BMPs and
16 available treatment BMPs, including information on design and maintenance; allowable
17 use of alternative BMPs; and a schedule for BMP implementation. The BMP manual will
18 also specify methods for future BMP manual revision.

19 2. Existing development, current activities, and new development activities
20 not covered by the Clark County stormwater control ordinance (Chapter 13.29) that are
21 not listed in the exemptions of this subsection are required to apply stormwater quality
22 BMPs listed in the Clark County stormwater quality manual or the stormwater
23 management manual for the Puget Sound Basin. A BMP not included in these manuals
24 may be approved by the director if it is demonstrated to provide equivalent effectiveness
25 for applying AKART.

26 3. In applying the BMP manual for existing development, the director shall
27 first require the implementation of nonstructural source control BMPs. If these are not
28 sufficient to prevent contaminants from entering surface and stormwater or
29 groundwater, the director may require implementation of structural source control BMPs
30 or treatment BMPs, using AKART.

31 B. Exemptions. The following persons or entities are exempt from the
32 provisions of this section unless the director determines the alternative BMPs to be
33 ineffective at reducing the discharge of contaminants:

34 1. Persons implementing BMPs through another federal, state or local
35 regulatory or resource management program, provided the director may perform
36 inspections to ensure compliance with this chapter. If the other program requires the
37 development of a best management practices plan, the person shall make their plan
38 available to Clark County upon request;

39 2. Persons engaged in the production of crops or livestock for commercial
40 trade; provided that such persons shall comply with the requirements of Chapter 13.51;

41 3. Persons engaged in forest practices regulated under Title 222 WAC,
42 except for Class IV general forest practices as defined under Chapter 222-16 WAC; and

1 4. Persons conducting normal residential activities at property containing a
2 single-family detached dwelling, duplex or triplex and modifications to it on a lot
3 approved for such use, unless the director determines that these activities pose a
4 hazard to public health, safety or welfare; endanger any property; or adversely affect the
5 safety and operation of county right-of-way, utilities, and/or other property owned or
6 maintained by the county.

7 **13.26A.040 Maintenance of Stormwater Facilities**

8 A. **Maintenance and Inspection Required.** All public and private drainage
9 facilities shall be inspected and maintained by the owner in accordance with the
10 Stormwater Facility Maintenance Manual. The intent is to ensure proper maintenance of
11 pollution control and quantity control facilities to protect surface water and groundwater.
12 The director may require the owner to conduct more frequent inspection and/or
13 maintenance when necessary to assure that facilities function as designed for pollutant
14 control and quantity control. The Stormwater Facility Maintenance Manual shall be filed
15 with and available at the Department of Public Works and the Department of
16 Community Development.

17 B. **Alternative Maintenance Practices.** An alternative maintenance practice to
18 those in the Stormwater Facility Maintenance Manual or maintenance practices for a
19 stormwater facility not included in the Stormwater Facility Maintenance Manual may be
20 approved by the director if demonstrated to provide equivalent effectiveness for meeting
21 manual desired outcomes and protecting water quality.

22 C. **Disposal of Waste from Maintenance Activities.** Disposal of waste from
23 maintenance of drainage facilities shall be conducted in accordance with federal, state,
24 and local regulations, including the Minimum Functional Standards for Solid Waste
25 Handling, Chapter 173-304 WAC; guidelines for disposal of waste materials; and where
26 appropriate, Dangerous Waste Regulations, Chapter 173-303 WAC.

27 D. **Exceptions.** The director may grant an exception for maintenance
28 requirements that conflict with federal, state, or local environmental regulations such as
29 a Washington Department of Fish and Wildlife Hydrologic Project Approval, a wetland
30 permit, geologically hazardous area requirements, or habitat conservation requirements.

31 E. **County Maintenance Projects.** The Public Works Director shall prepare a
32 list of stormwater facilities for major maintenance or repair. The list will be updated
33 annually and prioritize projects based on the needs to protect water bodies, protect
34 public safety, prevent catastrophic infrastructure failure, prevent flooding, and protect
35 infrastructure.

36 F. **Private Maintenance Projects.** Privately operated and maintained facilities
37 with deferred maintenance may require construction projects to bring them into
38 compliance with maintenance standards. The director may approve a work schedule to
39 bring these facilities into compliance with the Stormwater Facility Maintenance Manual.
40 This does not relieve the operator from performing routine maintenance and
41 enforcement under provisions of this chapter.

1 **13.26A.045 Administration**

2 The director is authorized to implement the provisions of this chapter. The
3 director of public works will coordinate the implementation and enforcement of this
4 chapter with other departments of Clark County government.

5 **13.26A.050 Enforcement**

6 A. The director is authorized to carry out enforcement actions pursuant to the
7 enforcement and penalty provisions of Title 32.

8 B. The director is authorized to make such inspections and take such actions
9 as may be required to enforce the provisions of this chapter. Such inspections shall be
10 made in accordance with Title 32.

11 1. The director may observe best management practices and maintenance
12 practices, or examine or sample surface and stormwater or groundwater as often as
13 may be necessary to determine compliance with this chapter. Whenever an inspection
14 of a property is made, the findings shall be recorded and a copy of the inspection
15 findings shall be furnished to the owner or the person in charge of the property after the
16 conclusion of the investigation and completion of the inspection findings.

17 2. When the director has made a determination under subsection 1 of this
18 section that any person is violating this chapter, the director may require the violator to
19 sample and analyze any discharge, surface and stormwater, groundwater and/or
20 sediment, in accordance with sampling and analytical procedures or requirements
21 determined by the director. If the violator is required to complete this sampling and
22 analysis, a copy of the analysis shall be provided to the director.

23 C. In addition to any other penalty or method of enforcement, the prosecuting
24 attorney may bring actions for injunctive or other relief to enforce this chapter.

25 **13.26A.060 Hazards**

26 A. Whenever the director determines that any violation of this chapter poses
27 a hazard to public health, safety or welfare; endangers any property; or adversely
28 affects the safety and operation of county right-of-way, utilities and/or other property
29 owned or maintained by the county; the person holding title to the subject property,
30 and/or other person or agent in control of such property, upon receipt of notice in writing
31 from the director shall within the period specified therein address the cause of the
32 hazardous situation in conformance with the requirements of this chapter.

33 B. Notwithstanding any other provisions of this chapter, whenever it appears
34 to the director that conditions covered by this chapter exist requiring immediate action to
35 protect the public health and/or safety, the director is authorized to enter such property,
36 as provided by Chapter 32.04, for the purpose of inspecting and investigating such
37 emergency conditions. The director may without prior notice order the immediate
38 discontinuance of any activity leading to the emergency condition. Failure to comply
39 with such order shall constitute a misdemeanor as specified in Title 32.

1 **13.26A.070 Criminal penalty**

2 Any willful violation of an order issued pursuant to Section 13.26A.050 or Section
3 13.26A.060 of this chapter for which a criminal penalty is not prescribed by state law is
4 a misdemeanor.

5 **13.26A.080 Construction—Intent**

6 A. This chapter is enacted as an exercise of the county's power to protect
7 and preserve the public health, safety and welfare. Its provision shall be exempted from
8 the rule of strict construction and shall be liberally construed to give full effect to the
9 objectives and purposes for which it was enacted. This chapter is not enacted to create
10 or otherwise establish or designate any particular class or group of persons who will or
11 should be especially protected or benefited by the terms of this chapter.

12 B. The primary obligation of compliance with this chapter is placed upon the
13 person holding title to the property. Nothing contained in this chapter is intended to be
14 or shall be construed to create or form a basis for liability for the county, the department,
15 its officers, employees or agents for any injury or damage resulting from the failure of
16 the person holding title to the property to comply with the provisions of this chapter, or
17 by reason or in consequence of any act or omission in connection with the
18 implementation or enforcement of this chapter by the county, department, its officers,
19 employees or agents.

20 **13.26A.090 Effective date**

21 The provisions of this chapter shall be effective immediately with the exception of
22 Section 13.26A.035 which shall become effective, without further action of the board of
23 county commissioners thirty (30) days after the Washington State Department of
24 Ecology issues Clark County a NPDES permit for discharges from its municipal
25 separate storm sewer system, or September 30, 1999, whichever is later.

26 **13.26A.100 Severability**

27 If any provision of this chapter or its application to any person or property is held
28 invalid, the remainder of the chapter or the application of the provision to other persons
29 or property shall not be affected.